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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of

Timothy J. Williams

Serial No. 09/579,938

Filed: May 26, 2000

For: **MOUNTABLE REUSABLE PAINT  
CONTAINER WITH SPIGOT  
ASSEMBLY AND STIRRING  
MECHANISM**

) Group Art Unit: 1723

) Examiner: Sorkin, D.

) **TRANSMITTAL LETTER**

) 162 North Wolfe Road  
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Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Enclosed please find an appeal brief in triplicate including 8 exhibits for filing with the U.S. Patent and Trademark Office. Also attached is a check in the amount of \$170.00 for filing the appeal brief.

The Commissioner is authorized to charge any additional fee or credit any overpayment to our Deposit Account No. 08-1275. **An originally executed duplicate of this transmittal is enclosed for this purpose.**

Respectfully submitted,  
HAVERSTOCK & OWENS LLP

Dated: November 29, 2004

By: Jonathan O. Owens  
Jonathan O. Owens  
Reg. No. 37,902

Attorneys for Applicants

CERTIFICATE OF MAILING (37 CFR § 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

HAVERSTOCK & OWENS LLP.

Date: 11-29-04 By: Jonathan O. Owens

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In re Application of )

Timothy J. Williams )

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Filed: 05/26/00 )

For: **MOUNTABLE REUSABLE  
PAINT CONTAINER WITH  
SPIGOT ASSEMBLY AND  
STIRRING MECHANISM** )

Group Art Unit: 1723

Examiner: Sorkin, D

**APPEAL BRIEF**

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Sir:

In furtherance of patent owner's Notice of Appeal filed on October 1, 2004, an Appeal Brief is submitted herewith in triplicate. This Appeal Brief is written in support of the patent owner's Notice of Appeal filed on October 1, 2004, and further pursuant to the rejection mailed on June 10, 2004.

Claims 1, 3-7, 9-11, 13-19, 21-26 and 28-34 have been rejected. Claims 20 and 27 have been allowed. The appellant submits this brief to the Board of Patent Appeals and Interferences in compliance with the requirements of 37 C.F.R. § 1.192. The appellant contends that the rejection of Claims 1, 3-7, 9-11, 13-19, 21-26 and 28-34 in this pending application is in error and should be overcome by this appeal.

**I. REAL PARTY IN INTEREST**

As the inventor in the above-captioned patent application, the real party in interest in this appeal is the following party:

Timothy J. Williams  
6332 SW Ash Creek Dr.  
Portland, OR 97219

**II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences related to the present patent application of which appellant is aware.

**III. STATUS OF CLAIMS**

Claims 1, 3-7, 9-11, 13-20, 21-27 and 28-34 are pending within this application. Claims 20 and 27 have been allowed. Claims 29-33 stand rejected under 35 U.S.C. § 112, first paragraph. Claims 1, 3, 4, 29 and 34 stand rejected under 35 U.S.C. § 102. Claims 1, 3-7, 9-11, 13-19, 21-26 and 28-33 stand rejected under 35 U.S.C. § 103. The rejections of Claims 1, 3-7, 9-11, 13-19, 21-26 and 28-34 are being appealed.

**IV. STATUS OF AMENDMENTS**

No amendments have been filed subsequent to the Office Action of June 4, 2004. The present condition of the claims is as listed in the Amendment and Response to the Office Action filed on April 13, 2004.

**V. SUMMARY OF THE INVENTION**

The claimed invention is directed to a mountable reusable paint container that is configured for mounting on a wall and includes one or more separate storage compartments formed in a downward sloping configuration with each compartment having a spigot coupled at the base for dispensing the stored paint product. [Present Specification, page 2, lines 2-4] The paint container further includes molded air tight lids configured for fitting over each of the compartments. [Present Specification, page 2, lines 5-6] Each of the paint containers preferably have a stirring mechanism formed within the lid which extends into the paint container when the lid is positioned over the paint container. [Present Specification, page 2, lines 6-7] The stirring device extends downward into the reusable paint container and includes a top handle portion, a threaded distance rod and a bottom fin portion. [Present Specification, page 2, lines 8-9] The bottom fin portion includes a plurality of small evenly spaced fins formed of plastic which rotate with the stirring device in the paint container when the top handle portion is manually activated. [Present Specification, page 2, lines 9-11]

In one aspect of the present invention, a frame is configured for holding the paint storage compartments. [Present Specification, page 3, line 22] In another aspect of the present invention, a body is configured for holding the paint compartments. [Present Specification, page 4, line 7]

Moreover, the present invention specifies a means for dispensing removably coupled to the paint storage compartments. [Present Specification, page 2, lines 18-19]

## **VI. ISSUES**

The issues presented by the appellant for review by the Board of Patent Appeals and Interferences are as follows:

1. Whether the Claims 29-33 are properly rejected under 35 U.S.C. § 112, first paragraph;
2. Whether the Claims 29-33 are properly rejected under 35 U.S.C. § 112, second paragraph;
3. Whether the Claims 1, 3, 4 and 29 are properly rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,842,606 to DeVito (hereinafter “DeVito”);
4. Whether the Claims 1, 3, 4 and 29 are properly rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,109, 482 to Briggs (hereinafter “Briggs”);
5. Whether the Claim 34 is properly rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,848,019 to Corbin et al. (hereinafter “Corbin”);
6. Whether the Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,311,017 to Reed et al. (hereinafter “Reed”); and
7. Whether the Claims 21 and 28 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Reed in view of Briggs.

## **VII. GROUPING OF CLAIMS**

The claims pending for appeal in the present application do not stand or fall together.

Regarding the rejection of Claims 29-33 under 35 U.S.C. § 112, first paragraph, Claims 29-33 do not stand or fall together because they each contain different limitations as set forth below.

Regarding the rejection of Claims 29-33 under 35 U.S.C. § 112, second paragraph, Claims 29-33 do not stand or fall together because they each contain different limitations as set forth below.

Regarding the rejection of Claims 1, 3, 4 and 29 under 35 U.S.C. § 102(b) as being anticipated by DeVito, Claims 1, 3, 4 and 29 can be grouped together.

Regarding the rejection of Claims 1, 3, 4 and 29 under 35 U.S.C. § 102(e) as being anticipated by Briggs, Claims 1, 3, 4 and 29 can be grouped together.

Regarding the rejection of Claim 34 under 35 U.S.C. § 102(b) as being anticipated by Corbin, Claim 34 does not stand or fall together with any other claims.

Regarding the rejection of Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 under 35 U.S.C. § 103(a) as being unpatentable over Reed, Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 do not stand or fall together because they each contain different limitations. Appellant sets forth, in the argument section of the brief, why the claims are believed to be separately patentable, and therefore should not stand or fall according to the grouping of the claims presented in the rejection. Relevant to this rejection under 35 U.S.C. § 103(a): Claims 1, 3-6 and 29 can be grouped together; Claims 7, 9, 10 and 30 can be grouped together; Claims 11, 13-15 and 31 can be grouped together; Claims 16-19 and 32 can be grouped together; and Claims 22-26 and 33 can be grouped together.

Regarding the rejection of Claims 21 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Reed in view of Briggs, Claims 21 and 28 do not stand or fall together because they each contain different limitations. Appellant sets forth, in the argument section of the brief, why the claims are believed to be separately patentable, and therefore should not stand or fall according to the grouping of the claims presented in the rejection.

## **VIII. ARGUMENT**

### **A. Claims 29-33 are not properly rejected under 35 U.S.C. § 112, first paragraph**

Within the Office Action, Claims 29-33 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, it is stated within the Office Action that the Claims 29-33 recite the limitation “the dispensing mechanism has a size sufficient for paint to flow through” which has not been discussed in the specification. Within the present specification it is provided that “[t]he spigot body 114 includes an aperture 120 and an interior through which the paint flows.” [Present Specification, page 9, lines 26-27] It is clear from at least this quoted sentence that the dispensing mechanism has a size sufficient for paint to flow through. Moreover, the purpose of the invention requires paint to flow through the dispensing mechanism, hence a size which is large enough for such is inherently obvious and need not be specifically stated within the specification.

**B. Claims 29-33 are not properly rejected under 35 U.S.C. § 112, second paragraph**

Within the Office Action, Claims 29-33 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is stated that any relationship between a substance being paint and a size is too vague to reasonably apprise one of ordinary skill in the art of the scope of the size of the dispensing mechanism. As known to those who have painted before and especially known to those skilled in the art, paint has a certain consistency and viscosity and will not flow through just any size opening. Paint, specifically house paint, has a viscosity typically between 3,000-6,000 centipoise and sometimes upwards of 20,000 centipoise, hence it is obvious that its viscosity will not permit it to flow through a small opening that liquids like milk or even tomato juice could flow through. [See the attached articles <http://www.currys.com/knowledge/aboutairbr.html>; and [http://66.102.7.104/search?q=cache:z1AWOHkFI\\_sJ:building-repair-materials.home-items-portal.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en](http://66.102.7.104/search?q=cache:z1AWOHkFI_sJ:building-repair-materials.home-items-portal.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en)]. An aperture or opening has to be of a sufficient size to allow paint to flow through. Such a size would be apparent to someone skilled in the art. As described above, within the specification it is provided that “[t]he spigot body 114 includes an aperture 120 and an interior through which the paint flows.” [Present Specification, page 9, lines 26-27] The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism due to the differences in consistency and viscosity of paint and beverages or similarly viscous liquids. Furthermore, with respect to the arguments made within the Office Action that other factors affect the flow of paint, the factors are either obvious to a person of ordinary skill in the art or described in the specification. The shape of the dispensing mechanism is depicted in Figure 3. The surface interaction forces, composition of the particular paint, composition of the dispensing mechanism and pressure drop may have a slight effect on the flow of the paint, which is why a general term like size is required. All other conditions being equal, the fact remains that a dispensing mechanism sized to allow milk to flow through can be much smaller than a dispensing mechanism for paint with a viscosity of 3,000 centipoise, hence the phrase “a size sufficient for paint to flow through.”

**C. Generally The References Applied Are Directed To Non Analogous Art**

Most of the references cited within the Office Action are directed to beverage containers. None of the cited references anticipate a paint storage container including a plurality of paint

storage compartments and a dispensing mechanism removeably coupled to the base of the paint storage compartments. Within the Office Action, In re Schreiber, 128 F.3d 1473, 44 USPQ2d 1429 (Fed. Cir. 1997) is relied on to support the proposition that the claims may still be anticipated by a reference that does not discuss paint. The applicant respectfully disagrees and believes Emergency Fuel, LLC v. Pennzoil-Quaker State Co., 293 F. Supp. 2d 569, applies more aptly. The court in Emergency Fuel provides, “[t]he appropriate analogy is therefore MEHL/Biophile, not Schreiber: new methods may be patentable even if they employ old tools.” The present claims cannot be anticipated by references directed to beverage containers which do not include a plurality of paint storage compartments and a dispensing mechanism removeably coupled to the base of the paint storage compartments, since the storage compartments and dispensing mechanism for paint are inherently different than those of beverage containers.

Further, none of the cited references are analogous art to a paint storage container. The Field of the Invention in this application reads “[t]he present invention generally relates to paint cans and containers. More specifically, the present invention relates to a reusable paint container for storing, mixing and dispensing paint products.” It would not have been obvious to someone skilled in the art to look to the cited references, which are all related to beverage containers, when designing a paint storage container.

**D. Claims 1, 3, 4 and 29 Are Patentable Over DeVito**

Within the Office Action, Claims 1, 3, 4 and 29 have been rejected under 35 U.S.C. § 102(b) as being anticipated by DeVito. DeVito teaches a beverage server. [DeVito, Title] DeVito explicitly teaches that his invention relates generally to drink serving devices, and, more specifically, to a beverage server able to provide a user with a desired number of drink selections. [DeVito, col. 2, lines 10-12] DeVito does not teach a paint storage container for storing and dispensing paint. DeVito also does not make obvious a paint storage container for storing and dispensing paint. The issues with storing and dispensing paint are very different than storing and dispensing beverages. Beverages such as milk, cream and tomato juice have viscosities of 3.2, 16.5 and 176 centipoise respectively. [June 10, 2004 Office Action, page 5] As known to those skilled in the art, paint has a certain consistency and viscosity and will not flow through just any size opening. Paint, specifically house paint, is typically between 3,000-6,000 centipoise and sometimes upwards of 20,000 centipoise, hence it is obvious that its viscosity will not permit it to flow through a small opening that liquids like milk or even tomato juice could flow through. [See the attached articles <http://www.currys.com/knowledge/aboutairbr.html>; and [http://66.102.7.104/search?q=cache:z1AWOHkFI\\_sJ:building-repair-materials.home-items-porta](http://66.102.7.104/search?q=cache:z1AWOHkFI_sJ:building-repair-materials.home-items-porta)

l.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en]. Further, Devito does not teach a means for dispensing removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

In contrast to the teachings of Devito, the present invention is directed towards a paint storage container including a plurality of paint storage compartments formed in downward sloping configuration with each compartment having a spigot coupled to the base for dispensing the stored paint. (Present Specification, Abstract). In one aspect of the present invention, a frame is configured for holding the paint storage compartments. (Present Specification, page 3, line 22). In another aspect of the present invention, a body is configured for holding the paint compartments. (Present Specification, page 4, line 7). Moreover, the present invention specifies a means for dispensing removably coupled to the paint storage compartments. (Present Specification, page 2, lines 18-19). Furthermore, in contrast to the teachings of Devito, the present invention teaches a dispensing means for dispensing paint without having to lift the paint storage compartments from a wall or a resting surface. The dispensing means is removeably coupled to the base of the paint storage compartments. As discussed above, Devito does not teach a paint storage container including one or more paint storage compartments. Devito also does not teach a means for dispensing removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

Within the Office Action, Ex Parte Thibault is cited for the proposition that, while Claim 1 discusses "paint," it is as an intended operation and is therefore of no significance. In re Schreiber, 44 USPQ 2d 1429, 1478 (Fed. Cir. 1997), provides "[a] patent applicant is free to recite features of an apparatus either structurally or functionally." The present invention includes both structural and functional features including "paint storage compartments," "storing paint," and "dispensing paint." Claim 1 does not merely discuss paint, but is specifically directed to a paint storage container. This is more than an intended operation, but specifically defines the type of apparatus that is claimed. Devito does not teach or make obvious a paint storage container. Further, as described above, the cases cited within the Office Action cannot properly be applied to the present claims, as the present claims are product claims and not directed to machinery which works upon an article or material in its intended use.

Although In re Schreiber held that a popcorn dispensing spout was anticipated by a spout for dispensing oil from an oil can, there are distinctions that make the present situation different. In Schreiber the court decided the same apparatus was used, and the only difference was the substance going through it - either oil or popcorn. In the present situation, the features of the



devices are inherently different. The size of the aperture for allowing paint, which has a much higher viscosity than beverages, must be larger than an aperture which allows beverages to pass through. Hence, unlike in Schreiber where the same device could be utilized for both oil and popcorn, the device taught by DeVito which is for beverages cannot also be utilized for paint. Clearly, the opening in the nozzle 66 is too narrow for a high viscosity substance like paint and is only useful for beverages. [Devito, Figure 3]

Additionally, it is provided in Perkin-Elmer Corp. v. Westinghouse Elec. Corp., 822 F.2d 1528, 1532 (Fed. Cir. 1987), that, “a court can not ignore a plethora of meaningful limitations.” Moreover, Diversitech Corp v. Century Steps, Inc., 850 F.2d 675, 677-78 (Fed. Cir. 1988), provides, “limitations stated in the preamble limit the claimed invention.” The present invention specifically claims a “paint container” in the preamble and further includes “paint storage compartments,” “storing paint,” and “dispensing paint” throughout the body of the claims. All of these limitations must be included and cannot be ignored. Therefore, references directed to beverage dispensers do not anticipate the presently claimed paint container device.

#### Claim 1

The independent Claim 1 is directed to a paint storage container. The paint storage container of Claim 1 comprises a plurality of paint storage compartments each for storing paint having a front, a back, a first side, a second side and a base, a frame holding the paint storage compartments and a means for dispensing. It is specified in Claim 1 that the means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the means for dispensing is capable of dispensing paint without lifting the paint compartments. As discussed above, Devito does not teach or make obvious a paint storage container. Further, Devito does not teach or make obvious a plurality of paint storage compartments for storing paint, a frame holding the paint storage compartments and a means for dispensing. Devito also does not teach that the means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments. For at least these reasons, the independent Claim 1 is allowable over the teachings of Devito.

#### Claims 3, 4 and 29

Claims 3, 4 and 29 are all dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Devito. Accordingly, the dependent Claims 3, 4 and 29 are all also allowable as being dependent on an allowable base claim.

**E. Claims 1, 3, 4 and 29 Are Patentable Over Briggs**

Within the Office Action, Claims 1, 3, 4 and 29 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Briggs. Briggs teaches a device for dispensing liquid from a bottle. [Briggs, Title] Briggs explicitly teaches that the general purpose of his invention is to provide a soda dispenser for conveniently dispensing soda from a 2-liter bottle or the like. [Briggs, col. 1, lines 30-35] Briggs does not teach a paint storage container for storing and dispensing paint. Briggs also does not make obvious a paint storage container for storing and dispensing paint. The issues with storing and dispensing paint are very different than storing and dispensing soda in 2-liter bottles. As known to those skilled in the art, paint has a certain consistency and viscosity and will not flow through just any size opening. As described above, paint, specifically house paint, is typically between 3,000-6,000 centipoise and sometimes upwards of 20,000 centipoise, hence it is obvious that its viscosity will not permit it to flow through a small opening that liquids like soda could flow through. [See the attached articles <http://www.currys.com/knowledge/aboutairbr.html>; and [http://66.102.7.104/search?q=cache:z1AWOHkFI\\_sJ:building-repair-materials.home-items-portal.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en](http://66.102.7.104/search?q=cache:z1AWOHkFI_sJ:building-repair-materials.home-items-portal.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en)]. Further, Briggs does not teach a means for dispensing removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

In contrast to the teachings of Briggs, the present invention is directed towards a paint storage container including a plurality of paint storage compartments formed in downward sloping configuration with each compartment having a spigot coupled to the base for dispensing the stored paint. (Present Specification, Abstract). In one aspect of the present invention, a frame is configured for holding the paint storage compartments. (Present Specification, page 3, line 22). In another aspect of the present invention, a body is configured for holding the paint compartments. (Present Specification, page 4, line 7). Moreover, the present invention specifies a means for dispensing removably coupled to the paint storage compartments. (Present Specification, page 2, lines 18-19). Furthermore, in contrast to the teachings of Briggs, the present invention teaches a dispensing means for dispensing paint without having to lift the paint storage compartments from a wall or a resting surface. The dispensing means is removeably coupled to the base of the paint storage compartments. As discussed above, Briggs does not teach a paint storage container including a plurality of paint storage compartments. Briggs also does not teach a means for dispensing removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

Again, within the Office Action, Ex Parte Thilbault is cited for the proposition that, while Claim 1 discusses “paint,” it is as an intended operation and is therefore of no significance. In re Schreiber, 44 USPQ 2d 1429, 1478 (Fed. Cir. 1997), provides “[a] patent applicant is free to recite features of an apparatus either structurally or functionally.” The present invention includes both structural and functional features including “paint storage compartments,” “storing paint,” and “dispensing paint.” Claim 1 does not merely discuss paint, but is specifically directed to a paint storage container. This is more than an intended operation, but specifically defines the type of apparatus that is claimed. Briggs does not teach or make obvious a paint storage container. Further, as described above, the cases cited within the Office Action cannot properly be applied to the present claims, as the present claims are product claims and not directed to machinery which works upon an article or material in its intended use.

Although In re Schreiber held that a popcorn dispensing spout was anticipated by a spout for dispensing oil from an oil can, there are distinctions that make the present situation different. In Schreiber the court decided the same apparatus was used, and the only difference was the substance going through it - either oil or popcorn. In the present situation, the features of the devices are inherently different. The size of the aperture for allowing paint, which has a much higher viscosity than beverages, must be larger than an aperture which allows beverages to pass through. Hence, unlike in Schreiber where the same device could be utilized for both oil and popcorn, the device taught by Briggs which is for dispensing liquids from a bottle cannot also be utilized for paint. Clearly the recess 16 and the tapered spigot 18 would clog if a viscous substance like paint were poured in. [Briggs, Figure 1]

Additionally, it is provided in Perkin-Elmer Corp. v. Westinghouse Elec. Corp., 822 F.2d 1528, 1532 (Fed. Cir. 1987), that “a court can not ignore a plethora of meaningful limitations.” Moreover, Diversitech Corp v. Century Steps, Inc., 850 F.2d 675, 677-78 (Fed. Cir. 1988), provides, “limitations stated in the preamble limit the claimed invention.” The present invention specifically claims a “paint container” in the preamble and further includes “paint storage compartments,” “storing paint,” and “dispensing paint” throughout the body of the claims. All of these limitations must be included and cannot be ignored. Therefore, references directed to liquid dispensers do not anticipate the presently claimed paint container device.

#### Claim 1

The independent Claim 1 is directed to a paint storage container. The paint storage container of Claim 1 comprises a plurality of paint storage compartments each for storing paint having a front, a back, a first side, a second side and a base, a frame holding the paint storage

compartments and a means for dispensing. It is specified in Claim 1 that the means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the means for dispensing is capable of dispensing paint without lifting the paint compartments. As discussed above, Briggs does not teach or make obvious a paint storage container. Further, Briggs does not teach or make obvious a plurality of paint storage compartments for storing paint, a frame holding the paint storage compartments and a means for dispensing. Briggs also does not teach that the means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments. For at least these reasons, the independent Claim 1 is allowable over the teachings of Briggs.

Claims 3, 4 and 29

Claims 3, 4 and 29 are all dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Briggs. Accordingly, the dependent Claims 3, 4 and 29 are all also allowable as being dependent on an allowable base claim.

**F. Claim 34 Is Patentable Over Corbin**

Within the Office Action, Claim 34 has been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,848,019 to Corbin et al. (hereinafter "Corbin"). Corbin teaches a device for mixing paints. Corbin does not teach a paint storage container for storing paints in an organized manner which will be used at a later date. Corbin teaches that the paint enters temporary storage reservoirs, is mixed, and is then output into a container.

In contrast to the teachings of Corbin, the present invention is directed towards a paint storage container including a plurality of paint storage compartments formed in downward sloping configuration with each compartment having a spigot coupled to the base for dispensing the stored paint. (Abstract). In one aspect of the present invention, a frame is configured for holding the paint storage compartments. (Specification, page 3, line 22). In another aspect of the present invention, a body is configured for holding the paint compartments. (Specification, page 4, line 7). Moreover, the present invention specifies a means for dispensing removably coupled to the paint storage compartments. (Specification, page 2, lines 18-19). As discussed above, Corbin does not teach storage compartments for storing paint.

The independent Claim 34 is directed towards a paint storage container. The paint storage container comprises one or more colors of paint, a plurality of paint storage compartments each for storing a color paint, each paint storage compartment having a front, a

back, a first side, a second side and a base, a frame holding the paint storage compartments, and a dispensing mechanism coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments. As discussed above, Corbin does not teach storage compartments for storing paint. For at least these reasons, the independent Claim 34 is allowable over the teachings of Briggs.

**G. Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 Are Patentable Over Reed**

Within the Office Action, Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Reed. Reed teaches a thermoelectric jug cooler for changing the temperature of a quantity of liquid. [Reed, col 2, lines 19-22] Reed does not teach a paint storage container for storing and dispensing paint. Reed also does not make obvious a paint storage container for storing and dispensing paint. The issues with storing and dispensing paint are very different than changing the temperature of a quantity of liquid. Beverages such as milk, cream and tomato juice have viscosities of 3.2, 16.5 and 176 centipoise respectively. [June 10, 2004 Office Action, page 5] As known to those skilled in the art, paint has a certain consistency and viscosity and will not flow through just any size opening. Paint, specifically house paint, is typically between 3,000-6,000 centipoise and sometimes upwards of 20,000 centipoise, hence it is obvious that its viscosity will not permit it to flow through a small opening that liquids like milk or even tomato juice could flow through. [See the attached articles <http://www.currys.com/knowledge/aboutairbr.html>; and [http://66.102.7.104/search?q=cache:z1AWOHkFI\\_sJ:building-repair-materials.home-items-porta1.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en](http://66.102.7.104/search?q=cache:z1AWOHkFI_sJ:building-repair-materials.home-items-porta1.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en)]. Further, Reed does not teach a dispensing mechanism removably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments.

In contrast to the teachings of Reed, the present invention is directed towards a paint storage container including a plurality of paint storage compartments formed in a downward sloping configuration with each compartment having a spigot coupled to the base for dispensing the stored paint. (Present Specification, Abstract). In one aspect of the present invention, a frame is configured for holding the paint storage compartments. (Present Specification, page 3, line 22). In another aspect of the present invention, a body is configured for holding the paint compartments. (Present Specification, page 4, line 7). Moreover, the present invention specifies a means for dispensing removably coupled to the paint storage compartments. (Present

Specification, page 2, lines 18-19). Furthermore, in contrast to the teachings of Reed, the present invention teaches a dispensing means for dispensing paint without having to lift the paint storage compartments from a wall or a resting surface. The dispensing mechanism is removeably coupled to the base of the paint storage compartments. As discussed above, Reed does not teach a paint storage container including a plurality of paint storage compartments. Reed also does not teach a dispensing mechanism removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

Again, within the Office Action, Ex Parte Thilbault is cited for the proposition that, while the claims discuss “paint,” it is as an intended operation and is therefore of no significance. In re Schreiber, at 1478, provides “[a] patent applicant is free to recite features of an apparatus either structurally or functionally.” The present invention includes both structural and functional features including “paint storage compartments,” “storing paint,” and “dispensing paint.” The claims do not merely discuss paint, but are specifically directed to a paint storage container. This is more than an intended operation, but specifically defines the type of apparatus that is claimed. Reed does not teach or make obvious a paint storage container. Further, as described above, the cases cited within the Office Action cannot properly be applied to the present claims, as the present claims are product claims and not directed to machinery which works upon an article or material in its intended use.

Further, the thermoelectric jug cooler of Reed is non-analogous art to the paint storage container of the present invention. It would not have been obvious to someone skilled in the art to look to the thermoelectric jug cooler of Reed, when designing a paint storage container, as presently claimed. “In order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443, 1446 (Fed. Cir. 1992). Also, the court in In re Schreiber at 1479, where the two devices seemed to be non-analogous art, mostly avoided the issue, but did state, “Schreiber acknowledges in the specification that the prior art pertinent to his invention includes patents relating to dispensing fluids...[he] therefore may not now argue that such patents are non-analogous art.” Contrary to Schreiber, there is no mention of food, beverages or other edible liquids that the present invention can utilize. The present invention is for paint and paint only, so food-related products, including a thermoelectric jug cooler, are non-analogous art.

Claim 1

The independent Claim 1 is directed to a paint storage container. The paint storage container of Claim 1 comprises a plurality of paint storage compartments each for storing paint having a front, a back, a first side, a second side and a base, a frame holding the paint storage compartments and a means for dispensing. The means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the means for dispensing is capable of dispensing paint without lifting the paint compartments. As discussed above, Reed does not teach or make obvious a paint storage container which includes a plurality of paint storage compartments each for storing paint. Reed also does not teach or make obvious that the means for dispensing is removeably coupled to the base of the paint storage compartments. For at least these reasons, the independent Claim 1 is allowable over the teachings of Reed.

Claims 3-6 and 29

Claims 3-6 and 29 are all dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Reed. Accordingly, the dependent Claims 3-6 and 29 are all also allowable as being dependent on an allowable base claim.

Claim 7

The independent Claim 7 is directed to a paint storage container. The paint storage container of Claim 7 comprises a plurality of paint storage compartments each for storing paint and each having a front, a back, a planar first side, a planar second side and a base, a frame holding the paint storage compartments, one or more lids covering the paint storage compartments and a stirring assembly removably coupled to the lids for stirring the paint stored in the paint storage compartments. The paint storage container of Claim 7 further comprises a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments. As discussed above, Reed does not teach or make obvious a paint storage container. Further, Reed does not teach or make obvious a plurality of paint storage compartments each for storing paint, a frame holding the paint storage compartments, one or more lids covering the paint storage compartments and a stirring assembly removably coupled to the lids for stirring the paint stored in the paint storage compartments. Reed also does not teach a dispensing mechanism removeably coupled to the

base of the paint storage compartments to dispense paint from the paint storage compartments. For at least these reasons, the independent Claim 7 is allowable over the teachings of Reed.

Claims 9, 10 and 30

Claims 9, 10 and 30 are all dependent on the independent Claim 7. As discussed above, the independent Claim 7 is allowable over the teachings of Reed. Accordingly, the dependent Claims 9, 10 and 30 are all also allowable as being dependent on an allowable base claim.

Claim 11

The independent Claim 11 is directed to a paint storage container. The paint storage container of Claim 11 comprises a plurality of paint storage compartments each for storing paint and each having a front, a back, a first side, a second side and a base, a frame holding the paint storage compartments, a dispensing mechanism removably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments, one or more lids covering the paint storage compartments and a stirring assembly removably coupled to the lid for stirring the paint stored in the paint storage compartments. As discussed above, Reed does not teach or make obvious a paint storage container. Further, Reed does not teach or make obvious a plurality of paint storage compartments each for storing paint and each having a front, a back, a first side, a second side and a base. Reed also does not teach or make obvious a dispensing mechanism removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments. For at least these reasons, the independent Claim 11 is allowable over the teachings of Reed.

Claims 13-15 and 31

Claims 13-15 and 31 are all dependent on the independent Claim 11. As discussed above, the independent Claim 11 is allowable over the teachings of Reed. Accordingly, the dependent Claims 13-15 and 31 are all also allowable as being dependent on an allowable base claim.

Claim 16

The independent Claim 16 is directed to a reusable paint container. The reusable paint container of Claim 16 comprises a plurality of paint compartments each for storing paint and each having a first front, a first back, a first side, a second side and a base, a body holding the



paint compartments having a second front, a second back, a planar third side and a planar fourth side, one or more lids removeably coupled to the paint compartments, a stirring mechanism removeably coupled to the outer side of the lids and a fan apparatus removeably coupled to the rod of the stirring mechanism on the inner opposite side of the lids. The reusable paint container of Claim 16 also includes a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments. As discussed above, Reed does not teach or make obvious a reusable paint container. Further, Reed does not teach or make obvious a plurality of paint compartments for storing paint. As discussed above, Reed does not teach or make obvious a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments. For at least these reasons, the independent Claim 16 is allowable over the teachings of Reed.

#### Claims 17-19 and 32

Claims 17-19 and 32 are all dependent on the independent Claim 16. As discussed above, the independent Claim 16 is allowable over the teachings of Reed. Accordingly, the dependent Claims 17-19 and 32 are all also allowable as being dependent on an allowable base claim.

#### Claim 22

The independent Claim 22 is directed to a reusable paint container. The reusable paint container of Claim 22 comprises a body having a first side, a second side and a plurality of integral paint compartments, each of the paint compartments having a front, a back, a planar first side, a planar second side and a base, one or more lids removeably coupled to the paint compartments, a stirring mechanism removeably coupled to the outer side of the lids and a fan apparatus removeably coupled to the rod of the stirring mechanism on the inner opposite side of the lid. The reusable paint container of Claim 22 also comprises a dispensing mechanism removeably coupled to the base of the paint compartments to dispense paint from the paint compartments. As discussed above, Reed does not teach or make obvious a reusable paint container. Further, Reed does not teach or make obvious a body having a plurality of paint compartments. As discussed above, Reed does not teach or make obvious a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments. For at least these reasons, the independent Claim 22 is allowable over the teachings of Reed.

Claim 23-26 and 33

Claims 23-26 and 33 are all dependent on the independent Claim 22. As discussed above, the independent Claim 22 is allowable over the teachings of Reed. Accordingly, the dependent Claims 23-26 and 33 are all also allowable as being dependent on an allowable base claim.

**H. Claims 21 and 28 Are Patentable Over Reed in view of Briggs**

Claims 21 and 28

Claims 21 and 28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Reed in view of Briggs. Claim 21 is dependent on the independent Claim 16. Claim 28 is dependent on the independent Claim 22. As discussed above, the independent Claims 16 and 22 are both allowable over the teachings of Reed. Accordingly, the dependent Claims 21 and 28 are also both allowable as being dependent on an allowable base claim.

**I. CONCLUSION**

It is therefore respectfully submitted that 1, 3-7, 9-11, 13-19, 21-26 and 28-34 are allowable over the teachings of the prior art. Therefore, a favorable indication is respectfully requested.

**IX. APPENDIX**

Claims Under Appeal

1. A paint storage container comprising:
  - a. a plurality of paint storage compartments each for storing paint having a front, a back, a first side, a second side and a base;
  - b. a frame holding the paint storage compartments; and
  - c. means for dispensing removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the means for dispensing is capable of dispensing paint without lifting the paint compartments.
2. canceled
3. The paint storage container as claimed in claim 1 wherein the means for dispensing paint includes a spigot assembly.
4. The paint storage container as claimed in claim 1 wherein the frame includes mounting slots for mounting the frame on a wall.
5. The paint storage container as claimed in claim 1 further comprising:
  - a. one or more lids covering the paint storage compartments; and
  - b. means for stirring removeably coupled to the lids for stirring the paint stored in the paint storage compartments.

6. The paint storage container as claimed in claim 5 wherein the means for stirring further comprises:

- a. a circular base having a central axis, wherein the circular base is configured for rotating about the central axis;
- b. a rod coupled to the circular base at the central axis such that the rod spins when the circular base is rotated about the central axis; and
- c. a stirring fan apparatus removeably coupled to the rod and having a plurality of fins which extend outwardly from the stirring fan apparatus and rotate about the central axis when the circular base is rotated for stirring the paint contained within the paint storage compartments.

7. A paint storage container comprising:

- a. a plurality of paint storage compartments each for storing paint and each having a front, a back, a planar first side, a planar second side and a base;
- b. a frame holding the paint storage compartments;
- c. one or more lids covering the paint storage compartments;
- d. a stirring assembly removably coupled to the lids for stirring the paint stored in the paint storage compartments; and
- e. a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments.

8. canceled

9. The paint storage container as claimed in claim 7 wherein the frame includes mounting slots for mounting the frame on a wall.
10. The paint storage container as claimed in claim 7 wherein the stirring assembly comprises:
- a. a circular base configured for rotating about a central axis;
  - b. a rod coupled to the circular base at the central axis such that the rod spins when the circular base is rotated about the central axis;
  - c. a stirring fan apparatus removeably coupled to the rod for stirring paint contained within the paint storage compartments, wherein the stirring fan apparatus includes a plurality of fins which extend outwardly from the stirring fan apparatus and rotate about the central axis when the circular base is rotated.
11. A paint storage container comprising:
- a. a plurality of paint storage compartments each for storing paint and each having a front, a back, a first side, a second side and a base;
  - b. a frame holding the paint storage compartments;
  - c. a dispensing mechanism removably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments;
  - d. one or more lids covering the paint storage compartments; and
  - e. a stirring assembly removably coupled to the lids for stirring the paint stored in the paint storage compartments.
12. canceled

13. The paint storage container as claimed in claim 11 wherein the dispensing mechanism includes a spigot assembly.
14. The paint storage container as claimed in claim 11 wherein the frame includes mounting slots for mounting the frame on a wall.
15. The paint storage container as claimed in claim 11 wherein the stirring assembly comprises:
  - a. a circular base configured for rotating about a central axis;
  - b. a rod coupled to the circular base at the central axis such that the rod spins when the circular base is rotated about the central axis; and
  - c. a stirring fan apparatus removeably coupled to the rod and having a plurality of fins which extend outwardly from the stirring fan apparatus and rotate about the central axis when the circular base is rotated.
16. A reusable paint container comprising:
  - a. a plurality of paint compartments each for storing paint and each having a first front, a first back, a first side, a second side and a base;
  - b. a body holding the paint compartments having a second front, a second back, a planar third side and a planar fourth side;
  - c. one or more lids removeably coupled to the paint compartments having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side;

- d. a stirring mechanism removeably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod is positioned through the aperture in the lids to extend into the paint compartment;
  - e. a fan apparatus removeably coupled to the rod of the stirring mechanism on the inner opposite side of the lids; and
  - f. a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments.
17. The reusable paint container as claimed in claim 16 wherein the body includes a plurality of mounting slots located on the back for mounting the body to a wall.
18. The reusable paint container as claimed in claim 16 wherein the stirring mechanism includes a handle for rotating the stirring mechanism about the central axis, thereby causing the fan apparatus to spin.
19. The reusable paint container as claimed in claim 16 wherein an interior of the paint compartments has a sloped area and a reservoir area.
20. A reusable paint container comprising:
- a. a plurality of paint compartments for storing paint, wherein an interior of the paint compartments has a sloped area and a reservoir area, wherein the reservoir area

includes a centrally located circular depression having a hole located in the center of the circular depression, wherein the hole is for coupling a spigot assembly to the paint compartment;

- b. a body holding the paint compartments having a front, a back, a planar first side and a planar second side;
- c. one or more lids removeably coupled to the paint compartments having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side;
- d. a stirring mechanism removeably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod is positioned through the aperture in the lids to extend into the paint compartment; and
- e. a fan apparatus removeably coupled to the rod of the stirring mechanism on the inner opposite side of the lids.

21. The reusable paint container as claimed in claim 16 wherein the first side of the body includes rounded ribs and the second side of the body includes rounded channels such that multiple reusable paint containers can be connected together by coupling the rounded ribs to the rounded channels.

22. A reusable paint container comprising:

- a. a body having a first side, a second side, and a plurality of integral paint compartments, each of the paint compartments having a front, a back, a planar first side, a planar second side and a base;



- b. one or more lids removeably coupled to the paint compartments each having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side;
  - c. a stirring mechanism removeably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod is positioned through the aperture in the lids extending into a corresponding paint compartment;
  - d. a fan apparatus removeably coupled to the rod of the stirring mechanism on the inner opposite side of the lid; and
  - e. a dispensing mechanism removeably coupled to the base of the paint compartments to dispense paint from the paint compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments.
23. The reusable paint container as claimed in claim 22 wherein the paint compartments are single walled.
24. The reusable paint container as claimed in claim 22 wherein the integral paint compartments include a plurality of mounting slots located on the back for mounting the body to a wall.
25. The reusable paint container as claimed in claim 22 wherein the stirring mechanism includes a handle for rotating the stirring mechanism about the central axis, thereby causing the fan apparatus to spin.

26. The reusable paint container as claimed in claim 22 wherein an interior of the paint compartments has a sloped area and a reservoir area.

27. A reusable paint container comprising:

- a. a body having a first side, a second side, and a plurality of integral paint compartments, each of the paint compartments having a front, a back, a planar first side and a planar second side, wherein an interior of the paint compartments has a sloped area and a reservoir area, wherein the reservoir area includes a centrally located circular depression having a hole located in the center of the circular depression, wherein the hole is for coupling a spigot assembly to the paint compartment;
- b. one or more lids removeably coupled to the paint compartments each having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side;
- c. a stirring mechanism removeably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod is positioned through the aperture in the lids extending into a corresponding paint compartment; and
- d. a fan apparatus removeably coupled to the rod of the stirring mechanism on the inner opposite side of the lid.

28. The reusable paint container as claimed in claim 22 wherein the first side of the body includes rounded ribs and the second side of the body includes rounded channels such that multiple reusable paint containers can be connected together by coupling the rounded ribs to the rounded channels.

29. The paint storage container as claimed in claim 1 wherein the means for dispensing has a size sufficient for paint to flow through.
30. The paint storage container as claimed in claim 7 wherein the dispensing mechanism has a size sufficient for paint to flow through.
31. The paint storage container as claimed in claim 11 wherein the dispensing mechanism has a size sufficient for paint to flow through.
32. The reusable paint container as claimed in claim 16 wherein the dispensing mechanism has a size sufficient for paint to flow through.
33. The reusable paint container as claimed in claim 22 wherein the dispensing mechanism has a size sufficient for paint to flow through.
34. A paint storage container comprising:
- a. one or more colors of paint;
  - b. a plurality of paint storage compartments each for storing a color paint, each paint storage compartment having a front, a back, a first side, a second side and a base;
  - c. a frame holding the paint storage compartments; and
  - d. a dispensing mechanism coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments.

**X. ATTACHMENTS**

The following documents, which are part of the record, are attached for convenience:

1. U.S. Patent No. 5,842,606 to DeVito
2. U.S. Patent No. 6,109, 482 to Briggs
3. U.S. Patent No. 2,848,019 to Corbin et al.
4. U.S. Patent No. 4,311,017 to Reed et al.
5. <http://www.currys.com/knowledge/aboutairbr.html>.
6. [http://66.102.7.104/search?q=cache:z1AWOHkFI\\_sJ:building-repair-materials.home-items-portal.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en](http://66.102.7.104/search?q=cache:z1AWOHkFI_sJ:building-repair-materials.home-items-portal.com/1-US-Gallon-Endure-Permanent-Exterior-House-Paint-3535666.html+%22house+paint%22+centipoise&hl=en).
7. The June 10, 2004 Office Action.
8. The January 21, 2004 Office Action.

Respectfully submitted,  
HAVERSTOCK & OWENS LLP

Dated: November 29, 2004

By: Jonathan O. Owens  
Jonathan O. Owens  
Reg. No. 37,902  
Attorneys for Applicants

**CERTIFICATE OF MAILING (37 CFR § 1.8(a))**

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

HAVERSTOCK & OWENS LLP.

Date: 11-29-04 By: Jonathan O. Owens

## **Paint Thickness Differences**

The viscosity of the paint to be sprayed is also equally important. Viscosity is measured in Centipoise (cPs). 1 Centipoise is the resistance of water, hence water has a viscosity of 1 cPs. Golden's ready to spray Airbrush Colors have a viscosity range of 40 - 60 cPs, making them ideal for illustration and fine art. Most textile airbrush colors range from 100 to 400 cPs. A typical house paint is 3000 - 6000 cPs.

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Country	us
Quantity	1



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## **Other Items: 1 US Gallon Endure Permanent Exterior House Paint**

### **Description**

Contact us at 1-888-600-8997 Endure Permanent Paint is a durable exterior coating that can be applied to any in place of ordinary house paints. Once properly applied the permanent exterior coating is guaranteed to resist

blistering, flaking, cracking, or chalking for a lifetime. Endure Permanent Paint looks like normal house paint and performs like a permanent protective shield on the exterior of a home. It not only has lab tests to prove its quality, but it has also passed the test of time. Tests have shown that the permanent coating, unlike normal house paint, stretch up to 600% of its original size allowing it to extend with the expansion and contraction of the surface covering making the coating extremely resilient. Endure Permanent Coating is up to ten times as thick as normal house paint allowing it to withstand the most rigorous elements of weather. The permanent coating is also waterproof, and resistant to mold and mildew. Because of these properties, Endure Permanent Paint will adhere to any paintable surface for a lifetime. **MAINTENANCE FREE EXTERIOR!** Endure Permanent Paint is a new revolutionary exterior coating that gives you what they highly desire—a maintenance free exterior for their home. Eliminate the reoccurring expense and hassle of painting the outside of your house forever. Protect and beautify your home with Endure Permanent Paint. Most homeowners desire a maintenance free exterior. They don't want the hassle and expense of repainting their house again. Exterior painted surfaces last an average of only five years before the paint begins to show signs of failure with normal house paints. As a result, exterior painting is a very costly expense that reoccurs every 5 to 7 years. Endure Permanent Paint can eliminate this ongoing maintenance for homeowners. The permanent coating is guaranteed to never chip, peel, chalk, or fade for a lifetime. Because the permanent coating is maintenance free for a lifetime, homeowners can save thousands upon thousands of dollars by permanently eliminating the expense of repainting their home. **FOR ANY SURFACE** Can Endure Permanent Paint be applied over? Endure Permanent Paint can be applied to any surface that normal house paints can be applied to. This includes wood, brick, mason block, stucco, stone, concrete, as well as aluminum and vinyl siding. What colors are available for Endure Permanent Paint? Endure Permanent Paint can be tinted to any color available for normal house paints. What does Endure Permanent Paint look like when it's on my house? Endure Permanent Paint looks like normal house paint when it's on the surface of a home. It has a satin finish, and can be tinted to any color that normal paint can be tinted to. What makes Endure Permanent Paint last a lifetime? Endure Permanent Paint was formulated to sustain the harshest elements of weather and has lab tests to prove it. Endure Permanent Paint stretches times as thick as normal house paints making it very resilient to extreme weather conditions. It can also stretch its normal size without cracking, chipping, or peeling. The permanent coating's waterproof qualities eliminate moisture problems, which is the number one reason why normal house paints fail. What has to be done to the surface before applying Endure? The area has to be thoroughly washed in order to remove dirt and dust from the surface. Needs to be scraped and sanded in order to remove any peeling paint that is on the surface. Caulking is applied over cracks in order to properly seal the area. After these steps are completed your house is ready for the application of Endure Permanent Paint. What is the cost versus aluminum or vinyl siding? Endure Permanent Paint is typically less expensive than aluminum or vinyl siding, yet will last as long while giving your home the appearance of being freshly painted. **Characteristics** Observations Weight per gallon: 12.1# ASTM D-1475. This is a very dense, not watered down paint. Maximum density, build, yield, and durability. Solids Weight: 72% ASTM D-2369. Water is light, resins and pigments are heavier. Solids Volume: 58% ASTM D-2697. High build and high yield due to low water content. Versus Typical House Paint Ceramic Coating is a resin-rich material that outperforms typical paint in durability, adhesion, flexibility, film build, and long term performance. Flammability ASTM D-2863. Non-Flammable and does not support combustion once cured. Finished Film Smooth with good flow and leveling to prevent brush marks. **Viscosity** Heavy bodied for good flow, yet easy to apply by roller or sprayer. 20-25Kcps (20,000+ centipoise) Brookfield viscometer. Tint Base Available in Pastel/Medium and Deep for a wide range of color tinting options while using a minimum of colorants which could affect dry times. **Product Stability** Product remains stable and usable for one year or longer depending on ambient environment. **Toxicity** Non-Toxic nor is it a health hazard when used as directed. Contains NO Lead or Chromium. **Product** cures to a tough, yet flexible wear resistant surface while preventing chipping. **Abrasion Resistance** Endure Permanent Paint is resistant to typical environmentally induced abrasion. **Touch-up** Easy to touch up and repair in the event of exterior damage. **Co-Product Availability** Endure Ceramic Coating is designed for use over the Endure Adhesive Bond and the Endure Caulk/Sealant. Other clear sealants are available for shingle roofs, exposed aggregate and other surfaces requiring beautification and protection. **Impact Resistance** Exceeds 20 inch pounds of impact with no effect. Endure Permanent Paint D-2370. Exceeds 200% elongation with 100% memory. **Flexibility** ASTM D-1737. Exceeds 1/8" mandrel bend without cracking, chipping or flaking. **Dirt Pickup** Endure Coatings have a soft sheen that prevents dirt and stains better than paints or coatings. The surface is tighter and special additives repel stains and dirt for a beautiful look—a long lasting finish. **Transmission** ASTM D-1654. Twenty (20) perms allow water vapor to leave the film but prevent water liquid from passing through the coating film. **Wind Driven Rain** NO water penetrated a 12 dry mil film during 24 hours propelled by 100 mph wind! **Salt Spray Resistant** ASTM D-1654. Exceeds 250 continuous hours with no evidence of peeling, blistering or deterioration. **High Humidity Resistant** Exceeds 250 continuous hours with no evidence of peeling, blistering or deterioration from the substrate. **Fungus/Mildew Resistant** NO growth after inoculated with 4 active microorganisms in an elevated humidity environment. **Weathering** ASTM D-822 / G-26. No deterioration of the coating film, no cracking, chalking or peeling after simulated 20 year weathering cycle. **Composition** Single component Urethane modified Acrylic with optional hardener or post added components for use. **Coverage** Benefit High build at 100 sf/gal/coat on smooth surface with one coat process. Porous surfaces require more coating. **Dry Film Yield** One coat at 18 wet mils yields 10 dry mils of dry film. 2 coats recommended. **Substrate Preparation** Clean, dry, solid, primed surfaces yield GREAT results and increase

Application Temperature Range Best applied at 390F to 980F for greater daily coating application and product  
Methods Brush, roller or airless sprayer for larger areas. Cure Time(tack-free) Dependent on Relative Humidity  
temperature for air drying, between 10 minutes and 30 minutes. Cure Time(primary) Dependent on Relative Humidity  
temperature for air drying, between 24 to 36 hours. Cure Time(complete) Dependent on Relative Humidity and  
air drying, between 7 to 10 days. Solvent System Used Safe, pure water. No other solvents or additives required  
accomplish extraordinary results. Adhesive Strength ASTM C-794. Exceptional Adhesion to properly prepared  
substrates. Cohesive Strength Exceptional Cohesive strength for strong inter-coat adhesion to itself. Color Re  
be tinted to over 5000 colors with clear reproduction and consistent tint strength. Sunlight Stability Contains no  
or resins that can yellow with age and exposure to UV light. Texture Endure Ceramic Coating yields a beautiful  
finish that hides imperfections in the underlying substrate and leaves a pleasing soft finish. Purity Filtered for easy  
spraying without clogs. Endure Permanent Paint coverage is 80-100 square feet per gallon. 50 Gallons is what  
home will need to apply two coats. Call us at (888) 600-8997 with any questions. Contact us at 1-888-600-899  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/579,938

05/26/2000

Timothy J Williams

TJW-00100

8295

28960

7590

06/10/2004

HAVERSTOCK & OWENS LLP  
162 NORTH WOLFE ROAD  
SUNNYVALE, CA 94086

EXAMINER

SORKIN, DAVID L

ART UNIT

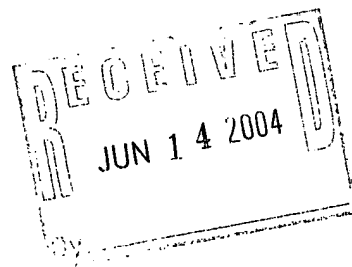
PAPER NUMBER

1723

DATE MAILED: 06/10/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Office Action Summary</b>	<b>Application No.</b> 09/579,938	<b>Applicant(s)</b> WILLIAMS, TIMOTHY J	
	<b>Examiner</b> David L. Sorkin	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-7,9-11 and 13-34 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☒ Claim(s) 20 and 27 is/are allowed.  
 6) ☒ Claim(s) 1,3-7,9-11,13-19,21-26 and 28-34 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 29-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. These claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. These claims recite the limitation "the dispensing mechanism has a size sufficient for paint to flow through". However, the issue of the size of the dispensing mechanism is simply not discussed in the originally filed specification at all.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 29-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The scope of the dispensing mechanism (means for dispensing) is rendered indefinite by the phrase "the dispensing mechanism has a size sufficient for paint to flow through". Any relationship between the size of a dispensing mechanism and the ability of paint to flow therethrough is too vague and non-causal to reasonably set forth the metes and bounds of the invention. Firstly, shape of the

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dispensing mechanism, surface interactions forces, composition of the particular paint, composition(s) of the dispensing mechanism (including hydrophobicity properties or other surface interaction determining properties) and especially pressure drop (including due to height of paint in the container) would all influence whether or not paint flows in a particular situation. Size of a dispensing mechanism alone does not determine whether or not paint flows. Secondly, there is not particular set of flow properties for "paint". The word "paint" does not imply any particular set of viscosity or surface interaction determining properties.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3, 4 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVito (US 5,842,606). Regarding claim 1, DeVito ('606) discloses a container comprising a plurality of compartments (a plurality of 34) having a front, a back, a first side, a second side and a base; a frame (a plurality of 12 joined together as disclosed) holding the compartments; and means (52) for dispensing removably coupled to the base of the compartments, wherein the means for dispensing is capable of dispensing

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without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also *In re Schreiber*, 44 USPQ2d 1429, 1931 (Fed. Cir. 1997), where a claimed popcorn dispensing spout was held anticipated by a spout for dispensing oil from an oil can. The container of DeVito ('606) is intended to hold liquids (see col. 1, lines 6-8) and clearly would be capable of holding and dispensing paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding claim 3, the means for dispensing paint includes a spigot assembly (see Fig. 5). Regarding claim 4, the frame includes mounting slots (38). Regarding claim 29, while, as discussed above, the scope of this claim is vague, one of ordinary skill in the art would understand that a structure which dispenses beverages would be capable of dispensing paint, because the term "paint" includes liquids of similar consistency to common beverages. Applicant argues "The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism". Applicant's supposed belief that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a liquid dispensing mechanism is overwhelmingly oxymoronic because paint is a liquid. Applicant admits paint is a liquid, for example, on page 8 line 7 and page 8 line 26 of the specification as filed. Regarding

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applicant's statement that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a beverage dispensing mechanism, an attorney's argument does not constitute evidence. Contrary to applicant's arguments, paint may be in the same viscosity range as beverages. For example Moran (US 5,899,362) discloses an example of paint having a viscosity of "7 centipoise" (col. 8 line 24), while Cole-Palmer's Food TechSource discloses that milk, cream and tomato juice have viscosities of 3.2, 16.5, and 176 centipoise respectively. The above data clearly refutes applicant's uncorroborated assertions. (See col. 5, lines 26-67 for a description of the dispensing mechanism).

7. Claims 1, 3, 4 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Briggs (US 6,109,482). Regarding claim 1, Briggs ('482) discloses an container comprising a plurality of compartments (see Fig. 5) having a front, back, first and second side and base; a frame (a plurality of 12 joined together as shown in Fig. 2) holding the compartments; and means (22) for dispensing removably coupled to the base of the compartments for dispensing from the compartments, wherein the means for dispensing is capable of dispensing without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. See also *In re Schreiber*, supra., where a claimed popcorn dispensing spout was held anticipated by a spout for

dispensing oil from an oil can. The container of Briggs ('482) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding and dispensing paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding claim 3, the means for dispensing paint includes a spigot assembly (see Fig. 3). Regarding claim 4, the frame includes mounting slots (42). Regarding claim 29, while, as discussed above, the scope of this claim is vague, one of ordinary skill in the art would understand that a structure which dispenses beverages would be capable of dispensing paint, because the term "paint" includes liquids of similar consistency to common beverages. Applicant argues "The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism". Applicant's supposed belief that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a liquid dispensing mechanism is overwhelmingly oxymoronic because paint is a liquid. Applicant admits paint is a liquid, for example, on page 8 line 7 and page 8 line 26 of the specification as filed. Regarding applicant's statement that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a beverage dispensing mechanism, an attorney's argument does not constitute evidence. Contrary to applicant's arguments, paint may be in the same viscosity range as beverages. For example Moran (US 5,899,362) discloses an example of paint having a viscosity of "7 centipoise" (col. 8 line 24), while Cole-Palmer's Food TechSource discloses that milk, cream and tomato juice have viscosities of 3.2, 16.5, and 176 centipoise respectively. The above data clearly refutes applicant's uncorroborated assertions. Note also the

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dispensing mechanism of Briggs ('482) is so big that it fits around the neck of a 2-liter soda bottle (see col. 4 lines 14-18).

8. Claim 34 is rejected under 35 U.S.C. 102(b) as being anticipated by Corbin et al. (US 2,848,019) discloses a paint storage container comprising one or more colors of paint (see col. 9, lines 66-73); a plurality of paint storage compartments (24) each for storing a color paint, each paint storage compartment having a front, a back, a first side and a base (see Figs. 1, 4 and 15); a frame (20,22) holding the paint storage compartments; and a dispensing mechanism (43,33) coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments (see col. 3 line 21 to col. 4 line 2).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (US 4,311,017). Regarding claim 1, Reed ('017) discloses a container comprising a plurality of compartments (24,27), each having a front, a back, a first side, a second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; and means (15,16) for dispensing



coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the dispensing means is removable (although Fig. 3 appears to depict a hex nut), the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 3, the dispensing means is a spigot assembly (see col. 5, lines 11-37). Regarding claim 4, the frame includes slots (101'). Regarding claim 5, one or more removable lids (25, 26 and/or 3) selectively cover the paint compartments, and means for stirring (111, 112, 113, 114) are removably coupled to the lids. Regarding claim 6, the stirring means further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 7, Reed ('017) discloses a container comprising a plurality of compartments (24, 27), each having a

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front, a back, a planar first side and a planar second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; lids (25,26 and/or 3); a stirring assembly (111,112,113,114) removably coupled to the lid(s); and a dispensing mechanism (15,16) coupled to the base. The dispensing mechanism is capable of dispensing without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding claim 9, the frame includes slots (101'). Regarding claim 10, the stirring means further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 11, Reed ('017) discloses a container comprising a plurality of compartments (24,27), each having a front, a back, a first side, a second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; a dispensing mechanism (15,16), one or more removable lids (25, 26 and/or 3) covering the

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compartments; and a stirring assembly (111,112,113,114) removably coupled to the lids. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault, supra*.

Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto supra*. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the dispensing means is removable (although Fig. 3 appears to depict a hex nut), the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 13, the dispensing mechanism includes a spigot assembly (see col. 5, lines 11-37). Regarding claim 14, the frame includes slots (101'). Regarding claim 15, the stirring assembly further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 16, Reed ('017) discloses a reusable container comprising a plurality of compartments (24,27) each having a first front, a first back, a first side, a second side and a base; body (2) holding the paint

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compartments having a second front, a second back, a planar third side and a planar fourth side (see Fig. 1); one or more removable lids (25, 26 and/or 3) coupled to the paint compartments having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side; a stirring mechanism (111,112,113,114) removably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod (112) is positioned through the aperture in the lids; a fan apparatus (113) coupled to the rod of the stirring mechanism on the inner opposite side of the lids; and a dispensing mechanism (15,16) coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 17, the body includes slots (101'). Regarding claim 18, the stirring mechanism includes a handle (see col. 6, lines 1 and 15-21). Regarding claim 19, the interior of the compartments has a sloped area and a reservoir area (see

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Figs. 2 and 3). Regarding claim 22, Reed ('017) discloses a reusable container comprising a body (2) having a first side and a second side and a plurality of compartments (24,27) each having a front, a back, a planar first side, a planar second side and a base; one or more removable lids (25, 26 and/or 3) coupled to the compartments having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side; a stirring mechanism (111,112,113,114) removably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod (112) is positioned through the aperture in the lids extending into a corresponding compartment; a fan apparatus (113) coupled to the rod of the stirring mechanism on the inner opposite side of the lids; and a dispensing mechanism (15,16) coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). See also *In re Larson*, 144

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USPQ 347, 349 (CCPA 1965) regarding the obviousness of making part integral.

Regarding claim 23, the paint compartments are single walled (see Fig. 5). Regarding claim 24, the body includes slots (101'). Regarding claim 25 the stirring mechanism includes a handle (see col. 6, lines 1 and 15-21). Regarding claim 26, the interior of the compartments has a sloped area and a reservoir area (see Figs. 2 and 3). Regarding claims 29-33, while, as discussed above, the scope of these claims is vague, one of ordinary skill in the art would understand that a structure which dispenses beverages would be capable of dispensing paint, because the term "paint" includes liquids of similar consistency to common beverages. Applicant argues "The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism". Applicant's supposed belief that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a liquid dispensing mechanism is overwhelmingly oxymoronic because paint is a liquid. Applicant admits paint is a liquid, for example, on page 8 line 7 and page 8 line 26 of the specification as filed. Regarding applicant's statement that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a beverage dispensing mechanism, an attorney's argument does not constitute evidence. Contrary to applicant's arguments, paint may be in the same viscosity range as beverages. For example Moran (US 5,899,362) discloses an example of paint having a viscosity of "7 centipoise" (col. 8 line 24), while Cole-Palmer's Food TechSource discloses that milk, cream and tomato juice have viscosities of 3.2, 16.5, and 176 centipoise respectively. The above data clearly refutes applicant's uncorroborated assertions. The dispensing

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mechanism of Reed ('017) is shown in Figs. 1 and 3 and described in col. 5, lines 11-37.

11. Claims 21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (US 4,311,017) in view of Briggs (US 6,109,482). The apparatus of Reed ('017), discussed above regarding claims 16 and 22, fails to include rounded ribs and channels. Briggs ('482) discloses rounded ribs (44) and channels/grooves (42). It is considered that it would have been obvious to one of ordinary skill in the art to have provided the apparatus of Reed ('017) with ribs and channels/grooves as taught by Briggs ('482), because Briggs ('482) states that such ribs and grooves provided the benefit of allowing removable side-by-side coupling of a plurality of unit apparatuses (see col. 5. lines 13-32).

#### ***Allowable Subject Matter***

12. Claims 20 and 27 are allowed.

#### ***Response to Arguments***

13. Applicant argues regarding the decision *In re Schreiber, supra.*, "The claims in *In re Schreiber*, are directed broadly to a 'dispensing top'", not a "'popcorn dispensing top'". However, claim 1 of *In re Schreiber* reads "A dispensing top for passing only several kernels of popped popcorn at a time from an open-ended container filed with popped popcorn...". The Federal Circuit addressed the issue of whether the dispenser would be capable of dispensing popped popcorn in the recited manner and concluded that the oil dispenser would be so capable.

14. Applicant argues "The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism". Applicant's supposed belief that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a liquid dispensing mechanism is overwhelmingly oxymoronic because paint is a liquid. Applicant admits paint is a liquid, for example, on page 8 line 7 and page 8 line 26 of the specification as filed. Regarding applicant's statement that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a beverage dispensing mechanism, an attorney's argument does not constitute evidence. Contrary to applicant's arguments, paint may be in the same viscosity range as beverages. For example Moran (US 5,899,362) discloses an example of paint having a viscosity of "7 centipoise" (col. 8 line 24), while Cole-Parmer's Food TechSource discloses that milk, cream and tomato juice have viscosities of 3.2, 16.5, and 176 centipoise respectively. The above data clearly refutes applicant's uncorroborated assertions.

#### **Conclusion**

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in cursive script, appearing to read "David L. Sorkin".

David L. Sorkin  
Examiner  
Art Unit 1723

David Sorkin



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,938	05/26/2000	Timothy J Williams	TJW-00100	8295
28960	7590	01/21/2004	EXAMINER	
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 01/21/2004



Please find below and/or attached an Office communication concerning this application or proceeding.

JAN 24 2004

## Office Action Summary

Application No.

09/579,938

Applicant(s)

WILLIAMS, TIMOTHY J

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9-11 and 13-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 and 27 is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9-11,13-19,21-26 and 28-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 22 September 2003 has been entered.

### ***Failure to Comply with 37 CFR 1.121(c)***

2. While the claims of the amendment filed 22 September 2003 are examined herein, applicant is notified that the amendment fails to comply with rule 121 (c) in that a complete list of all claims ever presented is not provided. Canceled claims 2, 8 and 12 are omitted from the list. Any reply to this office action should include a compliant listing of the claims.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 29-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had

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possession of the claimed invention. These new claims recite the new limitation "wherein the dispensing mechanism includes a diameter sufficient for paint to flow through". The originally filed specification does not discuss this issue at all. It is not stated that the dispensing mechanism has a "diameter" nor is the size of a passage, whether of a shape that has a diameter (such as a passage having a circular cross-section) or of a shape that does not have a diameter (such as a passage having a rectangular cross-section), discussed at all.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 29-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Any relationship between a substance being "paint" and the size of a "diameter" is too vague to reasonably apprise one of ordinary skill in the art of the scope of the claimed diameter; especially consider that the specification gives no guidance whatsoever concerning what a sufficient diameter would be.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

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351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 3, 4 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVito (US 5,842,606). Regarding claim 1, DeVito ('606) discloses a container comprising a plurality of compartments (a plurality of 34) having a front, a back, a first side, a second side and a base; a frame (a plurality of 12 joined together as disclosed) holding the compartments; and means (52) for dispensing removably coupled to the base of the compartments, wherein the means for dispensing is capable of dispensing without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also *In re Schreiber*, 44 USPQ2d 1429, 1931 (Fed. Cir. 1997), where a claimed popcorn dispensing spout was held anticipated by a spout for dispensing oil from an oil can. The container of DeVito ('606) is intended to hold liquids (see col. 1, lines 6-8) and clearly would be capable of holding paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding claim 3, the means for dispensing paint includes a spigot assembly (see Fig. 5). Regarding claim 4, the frame includes mounting slots (38). Regarding claim 29, the means for dispensing includes a diameter sufficient for paint to flow through (see col. 1, line 40; col. 5, lines 37-67; Figs. 4 and 5).

9. Claims 1, 3, 4 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Briggs (US 6,109,482). Regarding claim 1, Briggs ('482) discloses an container comprising a plurality of compartments (see Fig. 5) having a front, back, first and second side and base; a frame (a plurality of 12 joined together as shown in Fig. 2) holding the compartments; and means (22) for dispensing removably coupled to the base of the compartments for dispensing from the compartments, wherein the means for dispensing is capable of dispensing without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. See also *In re Schreiber*, supra., where a claimed popcorn dispensing spout was held anticipated by a spout for dispensing oil from an oil can. The container of Briggs ('482) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding claim 3, the means for dispensing paint includes a spigot assembly (see Fig. 3). Regarding claim 4, the frame includes mounting slots (42). Regarding claim 29, the means for dispensing includes a diameter sufficient for paint to flow through (see col. 4 lines 14-18 where it is explained that a diameter is so large that it fits around the neck of a 2-liter soda bottle).



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***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (US 4,311,017). Regarding claim 1, Reed ('017) discloses a container comprising a plurality of compartments (24,27), each having a front, a back, a first side, a second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; and means (15,16) for dispensing coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the dispensing means is removable (although Fig. 3 appears to depict a hex nut), the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 3, the dispensing means is a

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spigot assembly (see col. 5, lines 11-37). Regarding claim 4, the frame includes slots (101'). Regarding claim 5, one or more removable lids (25, 26 and/or 3) selectively cover the paint compartments, and means for stirring (111,112,113,114) are removably coupled to the lids. Regarding claim 6, the stirring means further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it is has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 7, Reed ('017) discloses a container comprising a plurality of compartments (24,27), each having a front, a back, a planar first side and a planar second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; lids (25,26 and/or 3); a stirring assembly (111,112,113,114) removably coupled to the lid(s); and a dispensing mechanism (15,16) coupled to the base. The dispensing mechanism is capable of dispensing without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding

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claim 9, the frame includes slots (101'). Regarding claim 10, the stirring means further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 11, Reed ('017) discloses a container comprising a plurality of compartments (24,27), each having a front, a back, a first side, a second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; a dispensing mechanism (15,16), one or more removable lids (25, 26 and/or 3) covering the compartments; and a stirring assembly (111,112,113,114) removably coupled to the lids. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the dispensing means is removable (although Fig. 3 appears to depict a hex nut), the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ

349 (CCPA 1961). Regarding claim 13, the dispensing mechanism includes a spigot assembly (see col. 5, lines 11-37). Regarding claim 14, the frame includes slots (101'). Regarding claim 15, the stirring assembly further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it is has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 16, Reed ('017) discloses a reusable container comprising a plurality of compartments (24,27) each having a first front, a first back, a first side, a second side and a base; body (2) holding the paint compartments having a second front, a second back, a planar third side and a planar fourth side (see Fig. 1); one or more removable lids (25, 26 and/or 3) coupled to the paint compartments having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side; a stirring mechanism (111,112,113,114) removably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod (112) is positioned through the aperture in the lids; a fan apparatus (113) coupled to the rod of the stirring mechanism on the inner opposite side of the lids; and a dispensing mechanism (15,16) coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, *supra*. Furthermore, "[i]nclusion of material or

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article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 17, the body includes slots (101'). Regarding claim 18, the stirring mechanism includes a handle (see col. 6, lines 1 and 15-21). Regarding claim 19, the interior of the compartments has a sloped area and a reservoir area (see Figs. 2 and 3). Regarding claim 22, Reed ('017) discloses a reusable container comprising a body (2) having a first side and a second side and a plurality of compartments (24,27) each having a front, a back, a planar first side, a planar second side and a base; one or more removable lids (25, 26 and/or 3) coupled to the compartments having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side; a stirring mechanism (111,112,113,114) removably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod (112) is positioned through the aperture in the lids extending into a corresponding compartment; a fan apparatus (113) coupled to the rod of the stirring mechanism on the inner opposite side of the lids; and a dispensing mechanism (15,16) coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to

contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). See also *In re Larson*, 144 USPQ 347, 349 (CCPA 1965) regarding the obviousness of making part integral. Regarding claim 23, the paint compartments are single walled (see Fig. 5). Regarding claim 24, the body includes slots (101'). Regarding claim 25 the stirring mechanism includes a handle (see col. 6, lines 1 and 15-21). Regarding claim 26, the interior of the compartments has a sloped area and a reservoir area (see Figs. 2 and 3). Regarding claims 29-33, while it is not entirely clear whether the reference meets the limitation of these claims due to the indefinite nature of these claims discussed above, the dispensing mechanism is shown in Figs. 1 and 3 and described in col. 5, lines 11-37.

12. Claims 21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (US 4,311,017) in view of Briggs (US 6,109,482). The apparatus of Reed ('017), discussed above regarding claims 16 and 22, fails to include rounded ribs and channels. Briggs ('482) discloses rounded ribs (44) and channels/grooves (42). It

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is considered that it would have been obvious to one of ordinary skill in the art to have provided the apparatus of Reed ('017) with ribs and channels/grooves as taught by Briggs ('482), because Briggs ('482) states that such ribs and grooves provided the benefit of allowing removable side-by-side coupling of a plurality of unit apparatuses (see col. 5. lines 13-32).

***Allowable Subject Matter***

13. Claims 20 and 27 are allowed.

***Response to Arguments***

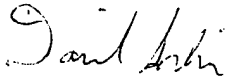
14. Mullen et al. (US 5,673,817) is no longer relied upon, because it is the policy of the USPTO to avoid cumulative rejections.

15. Applicant's arguments, rather than addressing the claimed structure, are directed to "paint". None of the instant claims requires "paint". While the claims use terms such as "paint storage container", the storage container is not constructed of "paint", nor is the storage container claimed in combination with "paint". Instead, "paint" is simply the intended contents of the container, which the stirrer and dispensing mechanism are intended work upon. As applicant's representative explained in the 09 September 2003 interview, applicant desires claim coverage of the container even when it is empty and does not contain anything, such as paint. All the containers of the applied references are capable of holding liquids such as paint; therefor, the inclusion of the word "paint" in the claims does not render the claims patentable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in cursive script, appearing to read "David Sorkin".

David Sorkin



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